TRIANGLE CLUB

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An Introduction to Corporate Governance

This handout is intended to give the reader a basic understanding of what corporate governance is, what specific duties and functions each role is charged with, and how to ensure legal compliance with corporate law.

A. Corporate Records

1. **Definition**: Corporate records are those records a corporation needs to keep in order to show that it is functioning in the manner required by the Internal Revenue Service and the laws of the state in which the business is incorporated. For example, sloppy record keeping can cause the loss of non-profit status.

2. **Purpose**. Corporate records are needed to show that the corporation is functioning appropriately, to show that the corporation is a separate entity from its Directors and Officers, and to maintain the corporate shield from liability. Many corporations have a corporate records book which includes all the required documents. Actions of the corporation may be recorded in writing in the form of a Unanimous Written Consent, called resolutions, rather than in minutes of meeting.

3. **Content**. What records to include:

- Articles of Incorporation
- Bylaws
- Minutes of all director meetings, including the annual meeting
- Annual reports
- Stock register for keeping track of stock transaction
- Corporate business and tax resolutions
- Hiring and appointment resolutions
- Director conflict of interest resolutions
- Authorizing resolutions
- Resolutions for loans to and by the corporation

B. Board of Directors

1. **Definition**: The individuals who are selected to be on the Board of Directors of a corporation have overall responsibility for the activities of the corporation. The Board acts on behalf of the shareholders (or non-profit constituency of the corporation) to make overall policy decisions and to provide oversight. A corporate board has great power and also great responsibility. Specific duties of the Board of Directors and of individual board members, committees and officers are set by the corporate Bylaws.

2. **Duties**. The primary duties of a corporate board are:

- Fiduciary responsibility. Corporate board members have a fiduciary responsibility to care for the finances and legal requirements of the corporation. They must act in good faith and with a reasonable degree of care, and they must not have any monetary conflicts of interest. That is, the interests of the company must take precedence over personal interest of individual board members.

- Mission and Vision. Board members are responsible for setting the mission of the corporation and assuring that all actions are related to and adhere to that mission. The Board can change the mission, but only after careful deliberation.
- Oversight. Corporate Boards of Directors do not participate in day-to-day decision-making; instead they set overall policy, based on the corporate mission and vision, and they exercise an oversight function, reviewing the actions of corporate officers and executives.
- Annual Meeting. At the annual meeting of the corporation, the board announces the annual dividend, adopts an annual budget for the next year, oversees election of corporate board members, elects or appoints officer and key executives, and amends Bylaws, if necessary.

3. **Selecting the Board of Directors**. Selecting a board of directors is an important part of starting a corporation. The board members will help officers and executives make decisions and also satisfy requirements of the state in which the corporation is formed. The following are things to think about when selecting board members:

- Number of Board members. An uneven number of board members should be selected to prevent tie votes. The number of directors depends on the size and complexity of the corporation. There should be enough so that, if several people are not present there will still be enough to make a decision, and for a quorum. Too many board members can slow down any meetings and progress.
- Qualities of the good board member.
  - **Expertise**. Expertise in a specific area which can help the corporation. For example, many corporations include an attorney and a financial advisor on their boards. Review the mission statement of the corporation and select board members who bring expertise to areas necessary to achieve the mission.
  - **Leadership**. Leadership and experience, especially in groups, organizations or societies which share common ambitions with the mission of the corporation. Select individuals who are willing to take the initiative to formulate policy and procedures which support the mission of the corporation.
  - **Commitment**. Board members must be interested in the business and its continued well-being. They should not be serving just for money or for personal gain. Board members will be expected to spend time and energy preparing for and attending board meetings, and to serve on additional committees.
  - **Integrity**. Board members must act in the best interest of the corporation, not personal interests. A board member who personally profits from his or her service on a board of directors may not act in the best interest of the corporation, and therefore put the entire mission of the corporation in jeopardy.
- Who not to select for Board of Directors.
  - Don't select someone just because they are a friend or relative
  - Don't select anyone you don't trust and aren't familiar with.
  - Don't select anyone who has a conflict of interest or potential conflict of interest.

4. **First Board of Directors Meeting**. The first meeting for the Board of directors of the corporation, sometimes called the Organizational Meeting, is an important thing. Typically at this meeting, the board of directors will:

- Acknowledge the Articles of Incorporation have been filed with the state and approve the Articles of Incorporation
- Designate a specific bank as the official depository for corporate funds
- Elect corporate officers, usually a President, Vice President, Secretary and Treasurer
- Direct the Treasurer to pay organizational expenses
- Approve the corporate bylaws
- After the meeting, written consent should be prepared to document decisions made at the board meeting. After each attending board member has signed the resolution, it should be kept with other corporate records in the Corporate Records Book.

5. **Removing a member from the Board of Directors**. There may come a time when a director must be removed from the Board. Removal from the board would be required if the director has a continuing conflict of interest that cannot be reconciled, has violated his fiduciary responsibility to the corporation, fails to participate and is therefore ineffective, or is acting contrary to the mission of the corporation. ***At all times a Board member must act in the best interest of the corporation (that is, to carry out the corporation's mission) and not for personal power, acknowledgment or financial gain.*** Some of the ways to remove a member of the board are:

- Term Limits. Most corporations set terms for directors, usually alternating years to maintain continuity. A typical arrangement might be for an initial three-year term, with two possible three-year appointments. So at the end of nine years, the individual must step down from the board. If the person is a valuable member of the board, a temporary, non-board position might be designated. Terms of directors, selection and removal of directors should be detailed in the Bylaws of the corporation.
- Intervention. The most difficult way to remove a director is to have a personal discussion with that individual and suggest that he or she needs to leave the board. To avoid division of the Board, documented evidence should be presented as a basis of the removal, and all Directors should agree removal is necessary. The board Chairman and chief executive and maybe the board attorney should be present at that discussion.
- Impeachment. The corporation's Bylaws should include a method of formally removing a board member for egregious acts, failure to fulfill duties or conflict of interest. The vote to impeach should be by 2/3 majority.

C. Bylaws

1. **Definition**. Bylaws are the rules of a corporation, written by the owners of the corporation at the time of its founding and ratified by the Board of Directors during the process of starting a corporation. Bylaws are the rules of how the corporation is set up, how it is managed, and how changes can be made to how the corporation operates and functions.

2. **Content**. The Bylaws of the corporation should include:

- The corporation's identifying information such as name, address, principal place of operation and designation of the corporation as public, private and/or non-profit
- Date and location of the annual meeting and special meetings of the corporation

- The number of directors and corporate officers authorized for the corporation and their qualifications
- Procedure for director an shareholder meetings, including frequency, location and protocol
- Procedure for corporate record-keeping including rules for preparation and inspection of the records and the location of the corporate records book.
- Procedure for amending Articles of Incorporation and Bylaws
- Title and compensation of corporate officers
- The fiscal financial year of the corporation
- Rules on approval of contracts, loans, checks, stock certificates and other types of corporate resolutions

3. Maintenance. After the Bylaws have been written they must be approved by the Board of directors and kept in a place where they can be viewed by the Internal Revenue Service or the state of another entity which might want to audit the corporation's records. All actions taken by the Board must be in compliance with the Bylaws.

D. Corporate Officers

1. **Definition.** Officers of the corporation have specific duties which carry out the overall policy decisions of the Board of Directors.

2. **Function.** In smaller corporations, it is often the case that the administrative duties are taken up by officers of the corporation, which are frequently Board members. In this case, the liability of the individual is increased. For example, a corporate treasurer, whose duties are restricted to oversight and policy, may also take on day-to-day financial responsibilities of paying bills and taxes. Wearing a corporate officer hat may be necessary, but be aware that the day-to-day duties subject the individual to different types of liabilities.

3. **Title and Responsibilities.** Typical corporate officers include the following:

- Chairman of the Board/President. The board chairman or president is responsible for the overall functioning of the Board of Directors and ensures that all appropriate actions are taken. Specifically, the Board Chair/President performs the following:
  - Ensures that an agenda is planned for each board meeting
  - Presides over meetings of the Board of Directors
  - Serves as supervisor to corporation executives reporting to the board
  - Serves as primary spokesperson for the organization
  - Signs specific documents on behalf of the Board of Directors and the corporation
- Vice Chairman/Vice President. The vice president of the corporation may have no specific duties but should be able to fill the duties of the President if required. Often, the Vice President chairs specific committees or has other regular duties, as determined by the board in the Bylaws or on an ad hoc basis.
- Corporate Secretary. The secretary of the Board of Directors has overall responsibility to create and maintain corporate records and other important corporation documents. Included in these responsibilities are:

- Record minutes of all board meetings and minutes of all committees as needed. Minutes must be taken in a specific form and all board and committee actions must be recorded.
- Keep records of all policies approved by the Board
- Maintain a calendar of corporate events, including the date of the annual meeting and budget approval dates
- Maintain personnel and payroll records for executive employees reporting directly to the Board of Directors
- Keep all records in a safe place and make sure all documents are in good order in case of audits

- Corporate Treasurer. The Treasurer of the Board of Directors has primary responsibility for the financial well-being of the corporation, but does not take day-to-day responsibility for financial transactions. Included in these responsibilities is:
  - Create and maintain the corporation's annual budget for each fiscal year. This includes presenting the budget to the Board for approval.
  - Create, implement and review financial policies for the corporation
  - Review investment activities of the corporation
  - Oversee the annual financial audit of the corporation (if public) and other audits of corporate records and finances
  - Chair the Board's finance committee